

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19A-0409E

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IN THE MATTER OF APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR THE ACQUISITION OF, AND APPROVAL OF COST RECOVERY FOR, THE MANCHIEF GENERATION FACILITY AND VALMONT 7 & 8.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
STEVEN H. DENMAN  
APPROVING SETTLEMENT AGREEMENT  
WITHOUT MODIFICATION AND  
GRANTING VERIFIED APPLICATION**

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Mailed Date: February 18, 2020

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**I. STATEMENT****A. Summary.**

1. This Recommended Decision approves, without modification, the Unanimous Comprehensive Settlement Agreement (Settlement Agreement), filed on January 8, 2020 by Public Service Company of Colorado (Public Service or Company), Trial Staff of the Colorado Public Utilities Commission (Staff), the Colorado Office of Consumer Counsel (OCC), Western Resource Advocates (WRA), and Southwest Generation Operating Company, LLC (SW Generation) (together the Settling Parties). This Recommended Decision also orders Public Service to implement certain reporting requirements to which it agreed in the Settlement Agreement, and it orders the Settling Parties to comply with the terms and conditions of the Settlement Agreement and with this Recommended Decision. Finally, this Decision grants the Verified Application (Application) for Certificates of Public Convenience and Necessity (CPCNs) for the acquisition of: (1) the 301 MW Manchief generation facility (Manchief); and (2) the 82 MW Valmont 7 and 8 generation units (Valmont).

**B. Procedural History.**

2. On July 23, 2019, Public Service filed with the Colorado Public Utilities Commission (Commission), a Verified Application (Application) for Certificates of Public Convenience and Necessity (CPCNs) for the acquisition of: (1) the 301 MW Manchief facility; and (2) the 82 MW Valmont generation units. Public Service also seeks approval of the Company's cost recovery proposal relating to these two facilities. Along with the Application, Public Service filed the supporting testimony and attachments of three witnesses. This filing commenced the above-styled proceeding.

3. In Phase II of Public Service's 2016 Electric Resource Plan (ERP), the Commission approved the Company's Preferred Colorado Energy Plan Portfolio (Colorado Energy Plan or CEPP), which was developed in collaboration with a diverse array of interested participants. Under the Colorado Energy Plan, Public Service would: (1) retire voluntarily, 660 MW of coal-fired generation to allow for implementation of the Colorado Energy Plan; (2) acquire approximately 1,100 MW of new wind resources (500 MW of which would be Company-owned); (3) acquire approximately 700 MW of new solar resources; (4) acquire 275 MW of new battery storage; and (5) acquire 383 MW of existing natural gas generation assets. The 383 MW of existing gas generation assets – Manchief and Valmont – are the subject of this Application.<sup>1</sup>

4. In the Application, Public Service requested the following approvals:
- a) Approval of a CPCN to acquire, own, and operate the existing 301 MW Manchief facility;
  - b) Approval of a CPCN to acquire, own and operate the existing 82 MW Valmont facility;
  - c) Approval to exercise an Early Purchase Option afforded by the terms of the Purchase and Sale Agreement with the owner of Valmont in order to bring that resource on-line in 2020, approximately two years earlier than the 2022 acquisition and in-service date of the facility contemplated in the approval of the CEPP (early acquisition is Public Service's preferred alternative in this Proceeding);
  - d) Approval of Public Service's cost recovery proposal for both the Manchief and Valmont facilities, which is described in the Application and includes acquisition adjustments for accounting purposes for both the Manchief and Valmont acquisitions; and

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<sup>1</sup> See Decision No. C18-0761 (mailed September 10, 2018). ¶¶ 103 – 108 and 119 – 121 at pages 31 – 33 and 36, in Proceeding No. 16A-0396E. The Commission required Public Service to file a CPCN application to acquire the natural gas-fired resources and to address cost recovery requests for those resources in the required CPCN application filing. *Id.*, ¶¶ 119 – 121 at page 36 and Ordering Paragraph No. 4 at page 42. The Administrative Law Judge takes administrative notice of Decision No. C18-0761 in Proceeding No. 16A-0396E (Phase II ERP Decision), pursuant to Rule 1501(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (2015).

e) Because the acquisitions of Manchief and Valmont were approved by the Commission in Decision No. C18-0761 0761 (mailed on September 10, 2018) in Proceeding No. 16A-0396E (Phase II ERP Decision) and the Application is consistent with Public Service's approved resource plan, if the Commission approves the early in-service date of summer 2020, Public Service requests a finding that the presumption of prudence attaches to this acquisition in any future rate review proceeding.<sup>2</sup>

5. On July 23, 2019, Public Service also filed a Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information. That motion was granted by Interim Decision No. R19-0845-I (mailed on October 17, 2019).

6. On July 25, 2019, the Commission issued a Notice of Application Filed (Notice) establishing deadlines for the filing of intervention pleadings. Interested persons were to file motions to intervene within 30 days, or no later than August 26, 2019.<sup>3</sup> Commission Staff had seven additional days to file a notice of intervention of right. The Notice observed that Public Service had filed testimony with the Application and was seeking a Commission decision within 120 days.

7. During the Commission's weekly meeting on September 4, 2019, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S., and was referred to an Administrative Law Judge (ALJ) for disposition. The undersigned ALJ was subsequently assigned to preside over this Proceeding.

8. Pursuant to § 40-6-109.5(1), C.R.S., when supporting testimony is filed with an application, as in this Proceeding, the Commission must issue its initial decision within 120 days

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<sup>2</sup> Hearing Exhibit 100, Application at pages 4 and 5.

<sup>3</sup> Since the 30-day deadline for interventions, pursuant to the Notice, as well as Rule 1401 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, fell on Saturday, August 24, 2019, the deadline was extended by operation of law until the next business day, or until Monday, August 26, 2019. Section 40-6-121, C.R.S.

after the application is deemed complete, or in this Proceeding no later than January 2, 2020. A recent amendment to § 40-6-109.5(1), C.R.S. (2019),<sup>4</sup> provides further that: “If the commission finds that additional time is required, it may, by separate order, extend the time for decision by an additional period not to exceed *one hundred thirty days*.” (Emphasis added.)

9. In Decision No. R19-0801-I (mailed on September 27, 2019), the ALJ determined that issuing a decision on the Application within 120 days would not be possible. Pursuant to § 40-6-109.5(1), C.R.S. (2019), in his sound discretion, the ALJ extended the decision deadline for an additional 130 days; that is, for a maximum period of 250 days or until May 11, 2020.

10. In the Application, Public Service requested, if the Commission approves the Early Purchase Option for Valmont (with an in-service date of the summer of 2020), that the Commission issue its “final order” no later than the first quarter of 2020, or by March 31, 2020. Since the Early Purchase Option issue would be litigated in this Proceeding, that issue could not be resolved initially until the ALJ issued the Recommended Decision. The ALJ believed that accommodating Public Service’s request for a “final order” by March 31, 2020, would be premature and would appear to prejudge a decision on the proposed Early Purchase Option for Valmont. Hence, the ALJ declined to truncate the decision deadline at that time and reiterated that the decision deadline was May 11, 2020.<sup>5</sup>

11. Decision No. R19-0801-I acknowledged the interventions as of right filed by the OCC on August 20, 2019, and filed by Staff on August 29, 2019. Decision No. R19-0801-I also

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<sup>4</sup> Section 40-6-109(1), C.R.S., was amended, effective on May 30, 2019, to give the Commission the discretion to extend the 120-day decision deadline on applications by an additional 130 days, for a total of 250 days. See Senate Bill 19-235, Section 16, at page 31; signed into law by Governor Jared S. Polis and effective on May 30, 2019.

<sup>5</sup> Decision No. R19-0801-I, ¶ 9 and Footnote 4 at pages 4 and 5.

granted the motions for permissive intervention filed on August 26, 2019 by SW Generation and by WRA.<sup>6</sup>

12. The Parties to this Proceeding are Public Service, Staff, OCC, SW Generation, and WRA.

13. Decision No. R19-0801-I also addressed procedural matters and scheduled a prehearing conference for October 11, 2019 at 10:00 a.m. The ALJ directed the Parties to consult prior to the prehearing conference regarding the procedural schedule, hearing dates, and other procedural matters. If the Parties were able to reach agreements on a procedural schedule and procedural matters, the ALJ encouraged Public Service to file those agreements no later than October 7, 2019.

14. Public Service filed a consensus Procedural Schedule on October 7, 2019. Decision No. R19-0827-I (mailed on October 8, 2019) vacated the prehearing conference and adopted the negotiated procedural schedule for filing answer, rebuttal, and cross-answer testimony and attachments, statements of position, and hearing dates. The Decision scheduled the evidentiary hearing for January 22 and 23, 2020.

15. Decision No. R19-0840-I (mailed on October 15, 2019) established procedures for the introduction of electronic hearing exhibits.

16. Decision No. R19-0958-I (mailed on November 27, 2019) granted Public Service's unopposed Motion to Alter Procedural Schedule and Request for Waiver of Response

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<sup>6</sup> Decision No. R19-0801-I, ¶¶ 25 through 41 at pages 9 through 16, denied the Petition to Intervene of Ms. Leslie Glustrom, who sought permissive intervention. Decision No. R19-0943-I (mailed on November 20, 2019) denied Ms. Glustrom's Motion Requesting Modification of Decision No. R19-0801-I and certified that Interim Decision as immediately appealable to the Commission. Decision No. C19-1024 (mailed on December 19, 2019) affirmed Decision No. R19-0801-I and the ALJ's denial of permissive intervention, and found arguments to recuse the ALJ not persuasive.

Time, and extended the dates for filing answer testimony and rebuttal / cross-answer testimony until December 16, 2019 and January 7, 2020, respectively.

17. On December 16, 2019, Public Service filed a Notice of Settlement in Principle and an Unopposed Motion to Suspend Procedural Schedule and Request for Waiver of Response Time. Public Service stated that the Parties had been engaged in settlement negotiations and had reached a global, comprehensive settlement in this Proceeding and that they were preparing a written Settlement Agreement. Public Service requested an Order: (1) suspending the procedural schedule; and (2) requiring Public Service and all Parties to file the finalized Settlement Agreement and supporting testimony by January 8, 2020. Moreover, all the Parties agreed to the requested relief.

18. Decision No. R19-1004-I (mailed on December 16, 2019) granted the Unopposed Motion to Suspend Procedural Schedule and Request for Waiver of Response Time; waived response time; suspended certain deadlines in the adopted procedural schedule; modified the date for filing the written settlement agreement; and ordered the settling parties to file written testimony and attachments (if needed) in support of approval of the Settlement Agreement no later than January 8, 2020. Decision No. R19-1004-I also vacated the evidentiary hearing on the merits set for January 22, 2020; and scheduled a hearing on the Settlement Agreement for January 23, 2020 at 9:30 a.m.

19. On January 8, 2020, Public Service, Staff, OCC, WRA, and SW Generation (Settling Parties) filed an Unopposed Motion to Approve Settlement Agreement (Unopposed Motion), requesting approval of the Settlement Agreement without modification. The Settlement

Agreement and Attachments A and B, purporting to resolve all issues in this Proceeding were attached to the Unopposed Motion.<sup>7</sup>

20. On January 16, 2020, Public Service filed the Settlement Testimony and Attachments of Jack W. Ihle, Director, Regulatory and Strategic Analysis for Xcel Energy Services Inc., to support the approval of the Settlement Agreement (Hearing Exhibit 104). Also on January 16, 2020, other Settling Parties filed written testimony, as follows: (1) WRA filed the Testimony of Gwendolyn Farnsworth, WRA's Senior Energy Policy Advisor, in support of approval of the settlement (Hearing Exhibit 600); (2) OCC filed the Testimony of Deputy Director Joseph Pereira in support of approval of the settlement (Hearing Exhibit 400); and (3) Staff filed the Testimony of Erin T. O'Neill, the Chief Economist, in support of approval of the Settlement Agreement along with 11 Attachments (Hearing Exhibit 300).

21. At the January 23, 2020 hearing on the Settlement Agreement, the latest revised electronic versions of the pre-filed Direct Testimony, Settlement Testimony, and related Attachments were listed in Hearing Exhibit 700 and were admitted into evidence by administrative notice. The Settlement Agreement and Attachments A (Rev. 1) and B were also admitted into evidence as Hearing Exhibit 105. Oral testimony in support of approving the Settlement Agreement was received from Mr. Ihle, on behalf of Public Service and from Ms. O'Neill on behalf of Staff. Both witnesses responded to questions from the ALJ regarding the Settlement Agreement and their respective Settlement Testimony. Public Service called Messrs. James F. Hill and Kyle L. Williams to respond to several of the ALJ's questions.

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<sup>7</sup> On January 13, 2020, Public Service filed a Corrected Unopposed Motion and a Corrected Attachment A. The only change in the Corrected Unopposed Motion was to revise the telephone number and email address of the Assistant General Counsel who signed the pleading. Corrected Attachment A (Rev. 1) included a missing tab omitted from the original document.



22. No public comments were filed in this Proceeding.

23. This Recommended Decision will adjudicate the merits of the Settlement Agreement and the Application.

24. In rendering this Decision, the ALJ has carefully reviewed and considered all the evidence introduced by the Parties during the Settlement Hearing, including the testimony and hearing exhibits, even if this Decision does not specifically address all of the evidence. In reaching his Findings and Conclusions, the ALJ has weighed the evidence and evaluated the credibility of the witnesses and the hearing exhibits.<sup>8</sup>

## II. FINDINGS AND DISCUSSION

### A. **The Settlement Agreement.**

25. As noted earlier, the Settling Parties are Public Service, Staff, OCC, WRA, and SW Generation. In the Settlement Agreement, Hearing Exhibit 105, the Settling Parties have proposed a comprehensive settlement addressing all contested issues that have been raised, or could have been raised, in this Proceeding. The Settling Parties agree that the compromises reflected in the Settlement Agreement represent a just and reasonable resolution of the issues raised by Public Service's Application and pre-filed Direct Testimony in this Proceeding, and that reaching their agreement by means of a negotiated settlement is in the public interest.<sup>9</sup>

26. The Settlement Agreement includes two attachments. Attachment A, Rev. 1, shows the different Loads and Resources tables from the August 2017 updated ERP

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<sup>8</sup> See *Durango Transportation, Inc. v. Colorado Public Utilities Comm'n.*, 122 P.3d 244, 252 (Colo. 2005); *RAM Broadcasting of Colo., Inc. v. Public Utilities Comm'n.*, 702 P.2d 746, 750 (Colo. 1985).

<sup>9</sup> Corrected Unopposed Motion to Approve Settlement Agreement, ¶¶ 2 and 3 at pages 1 and 2.

(Proceeding No. 16A-0396E) assumptions filing (inclusive of the early retirement of the Comanche 1 and Comanche 2 generating units and the CEPP resources to the October 2019 ERP Annual Update with annotated explanations of key drivers. Attachment B shows the 120-Day Report financial modeling for Valmont and Manchief versus the financial modeling for these generators based on the more refined and detailed due diligence conducted for purposes of this CPCN Proceeding. Attachment B includes a comparison table for each generator illustrating changes as between the two financial models as the Company has moved forward with these approved acquisitions. More details about Attachments A and B are provided in the Settlement Agreement (Hearing Exhibit 105, Section III at pages 8 through 10). The Settlement Agreement, including its two Attachments, is attached to this Decision as Appendix A.

27. The Settlement Agreement is unanimous.

28. Approval of the Settlement Agreement was supported by the filed Settlement Testimonies of Public Service witness Jack Ihle (Hearing Exhibit 104), as well as by the oral testimonies at the January 23, 2020 Settlement hearing of Mr. Ihle and Public Service witnesses James Hill and Kyle Williams. Approval of the Settlement Agreement was also supported by the filed Settlement Testimonies of WRA witness Gwendolyn Farnsworth (Hearing Exhibit 600); OCC witness Joseph Pereira (Hearing Exhibit 400); and Staff witness Erin T. O'Neill (Hearing Exhibit 300). Ms. O'Neill also presented oral testimony at the Settlement hearing. All witnesses for the Settling Parties agreed, for various reasons discussed in their testimonies, that the Settlement Agreement is just and reasonable, in the public interest, and should be approved without modifications.

29. The Commission encourages the settlement of contested proceedings. Rule 1408 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (2015).

**1. Granting the CPCNs.**

30. The Settling Parties agree that the Application, as modified by the Settlement Agreement, is in the public interest and that the Commission should grant the Application as modified by the Settlement Agreement. The Settling Parties agree that two CPCNs should be approved: (1) a CPCN for Public Service to acquire, own, and operate the existing 301 MW Manchief facility; and (2) a CPCN for Public Service to acquire, own, and operate the existing 82 MW Valmont units.

31. The Manchief facility is an existing 301 MW simple-cycle, natural gas-fired peaking power plant comprised of two Siemens Westinghouse V84.3A1 gas combustion turbines arranged for parallel operation with a single point of delivery to the Public Service transmission system. It is located approximately 90 miles northeast of Denver near Brush, Colorado. Constructed between 1999 and 2000, Manchief entered commercial operation in July 2000, and was acquired in 2011 by the current owner, Atlantic Power Corporation. Since its construction, the entire output of Manchief has been under contract to Public Service pursuant to a Purchase Power Agreement (PPA) that will expire in 2022. Consistent with Decision No. C18-0761 (mailed on September 10, 2018) in Proceeding No. 16A-0396E (Phase II ERP Decision), Public Service proposed in the Application to acquire Manchief after the PPA expires in 2022, and expects to continue to operate the facility as a peaking plant on the Public Service system.

32. Valmont (consisting of Units 7 & 8) is an 82 MW simple-cycle, natural gas-fired peaking facility located in Boulder, Colorado, within the boundary of the

decommissioned former Valmont coal plant site. Owned by SW Generation, Valmont is located on land leased from Public Service. Unit 7 began commercial operations in May 2000, and Unit 8 began commercial operations in May 2001. Public Service previously had a PPA with SW Generation for the full output of Valmont. The PPA expired in 2012, and Valmont has not been under contract to Public Service since that time. Valmont is comprised of two GE LM6000 gas turbines. All plant equipment, gas supply, electric interconnection, and other infrastructure have been maintained at the site to allow for reestablishment of commercial operation upon reinstallation of the CT engine cores. In Decision No. C18-0761, the Commission authorized Valmont to be placed in-service in 2022. In this Application and its supporting testimony, Public Service proposed to exercise an Early Purchase Option included in the Purchase and Sale Agreement (PSA) in order to place Valmont into service in the summer of 2020.

33. The Settling Parties agree that the assumed asset life for Valmont is 2038 and the assumed asset life for Manchief is 2040. No costs were modeled or included for these generating units beyond the end of these asset lives. The Settling Parties agree further that depreciation expenses for Valmont and Manchief are based on an assumption of straight-line depreciation over the assets' remaining useful lives of 18 years (*i.e.*, 2020-2038 for Valmont and 2022-2040 for Manchief) with an assumed 9.92 percent removal cost. Based upon testimony at the Settlement Hearing from Messrs. Ihle, Hill, and Williams, the ALJ finds that the assumed asset lives, straight-line depreciation method, and removal costs are reasonable.

34. The Settlement Agreement states that the acquisition of the Manchief and Valmont facilities is necessary to meet Public Service's near-term reliability needs and to

ensure system reliability for customers based on the distinct circumstances and considerations of this proceeding. The acquisition of Valmont and Manchief will help ensure Public Service has adequate capacity to meet its reserve margin. Without these units, Public Service is not projected to meet its target reserve margin of 16.3 percent in the years of 2022 through 2025, based on the Loads and Resources table (provided as Table (ii) in Attachment A, Rev. 1). Further, the Settlement Agreement asserts the acquisition of these units is necessary to integrate significant levels of renewable generation resources onto Public Service's system as approved in the CEPP and projected to be necessary as Public Service moves to meet future legislative clean energy targets.

35. The ALJ finds that the flexible generation resulting from the acquisition of Manchief and Valmont will support the integration of renewable generation, because the units could be operated in tandem with renewable generation and displace the operation of more carbon-intensive generation resources. Additionally, Manchief and Valmont will provide low-cost options that allow for integration of additional levels of renewable energy, as well as contribute significantly to meeting Public Service's resource need identified in the Phase II ERP Decision (Decision No. C18-0761 in Proceeding No. 16A-0396E).

36. The Settling Parties also agree that, without Valmont and Manchief, the Colorado Energy Plan could result in increased curtailments of renewable energy, which would increase carbon dioxide emissions from the Public Service system and significantly reduce Public Service's ability to integrate its wind generation portfolio reliably, which portfolio is expected to increase by 1,100 MW by the end of 2020 under the approved

CEPP.<sup>10</sup> The Settling Parties agree that this acquisition should have a presumption of prudence consistent with Rule 3617(d) of the ERP Rules, 4 CCR 723-3.<sup>11</sup>

37. Rule 3617(d) of the Rules Regulating Electric Utilities, 4 CCR 723-3, provides that:

- (d) Effect of the Commission decision. A Commission decision specifically approving the components of a utility's plan creates a presumption that utility actions consistent with that approval are prudent.
  - (I) In a proceeding concerning the utility's request to recover the investments or expenses associated with new resources.
    - (A) The utility must present prima facie evidence that its actions were consistent with Commission decisions specifically approving or modifying components of the plan.
    - (B) To support a Commission decision to disallow investments or expenses associated with new resources on the grounds that the utility's actions were not consistent with a Commission approved plan, an intervenor must present evidence to overcome the utility's prima facie evidence that its actions were consistent with Commission decisions approving or modifying components of the plan. Alternatively, an intervenor may present evidence that, due to changed circumstances timely known to the utility or that should have been known to a prudent person, the utility's actions were not proper.
  - (II) In a proceeding concerning the utility's request for a CPCN to meet customer need specifically approved by the Commission in its decision on the final cost-effective resource plan, the Commission shall take administrative notice of its decision on the plan. Any party challenging the Commission's decision regarding need for additional resources has the burden of proving that, due to a change in circumstances, the Commission's decision on need is no longer valid.

38. Based upon substantial evidence in the record, the ALJ finds that Manchief and Valmont provide low-cost options to Public Service that will allow for integration of additional

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<sup>10</sup> Hearing Exhibit 105, Settlement Agreement, at page 14.

<sup>11</sup> Hearing Exhibit 105, Settlement Agreement, at pages 15 and 16; Hearing Exhibit 104, Settlement Testimony of Jack W. Ihle at pages 15 through 18.

levels of renewable energy and contribute significantly to meeting the resource need identified in Proceeding No. 16A-0396E. Moreover, the acquisition of Valmont and Manchief is a utility action consistent with Public Service's approved resource plan, and there is no change in circumstances rendering the Commission's prior approvals invalid.

39. Therefore, the ALJ agrees and finds that the acquisition of Valmont and Manchief will have a presumption of prudence consistent with Rule 3617(d) of the Rules Regulating Electric Utilities, 4 CCR 723-3.

40. Based upon substantial evidence in the record, the ALJ finds that it is just and reasonable to approve and to issue the two CPCNs for Public Service to acquire, own, and operate the existing 301 MW Manchief facility and the existing 82 MW Valmont units.

## **2. Timing of the Acquisitions of Valmont and Manchief.**

41. As for the timing of the acquisitions, the Settling Parties agree that the Commission should approve: (1) Public Service's exercise of the Early Purchase Option for Valmont and moving forward the acquisition and in-service date of Valmont from May 1, 2022 to on or before June 1, 2020; and (2) Public Service's acquisition of Manchief on or before June 1, 2022.

42. The Settling Parties believe exercise of the Early Purchase Option for Valmont is consistent with Public Service's approved resource plan and is cost-effective and beneficial for customers. They agree that exercise of the Early Purchase Option to acquire Valmont two years earlier than initially approved in Phase II is prudent from an operational and customer perspective. First, the Settling Parties assert that an analysis developed by Public Service projects that on a present value basis, the cost to customers of the Early Purchase Option is about \$1 million lower than the cost associated with a May 2022 purchase. The Early Purchase

Option price is as low as \$18.5 million if exercised by May 1, 2020, but increases on a sliding scale over time up to \$19.9 million by May 1, 2022.<sup>12</sup>

43. Second, from an operational standpoint, the Settling Parties agree there are reliability benefits from the early acquisition of Valmont, when compared to a seasonal market purchase. This reliability benefit stems from the fact that Valmont would be available to Public Service's system dispatchers for 24 hours a day for the 23 to 24 months between the May or June 2020 and May 2022 timeframe versus a seasonal market purchase. This considerable increase in unit availability associated with the summer 2020 purchase would be used to help serve customer load, respond to contingencies, and provide valuable flexibility to help integrate renewables onto the system. The Settling Parties assert that the Early Purchase Option for Valmont should be approved.<sup>13</sup>

44. Based upon substantial evidence in the record, the ALJ finds that the exercise of the Early Purchase Option for Valmont will be cost-effective and the more reliable option. It will be more cost-effective for Public Service to move forward with placing into service Valmont, a known and approved resource, as opposed to relying solely on market power purchases to meet its summer 2020 resource need. Public Service's exercise of the Early Purchase Option will be beneficial for its customers.

45. The ALJ will approve Public Service's exercise of the Early Purchase Option for Valmont as just and reasonable and in the public interest.

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<sup>12</sup> Hearing Exhibit 105, Settlement Agreement, at pages 8 through 10, 16 and 17; Attachment B to the Settlement Agreement; Hearing Exhibit 104, Settlement Testimony of Jack W. Ihle at pages 15 through 18; Hearing Exhibit 102, Direct Testimony of James F. Hill, at pages 18 through 29.

<sup>13</sup> Hearing Exhibit 105, Settlement Agreement at pages 6 and 7; Hearing Exhibit 103, Direct Testimony of Kyle L. Williams, at pages 17 through 32.



46. The Settling Parties agreed that Public Service should acquire Manchief upon termination of the PPA for Manchief in the spring of 2022. The Settling Parties agreed further that Public Service would assume ownership and operation of Manchief upon closing the PSA on or before June 1, 2022.<sup>14</sup>

47. Based upon substantial evidence in the record, the ALJ finds that Public Service may acquire, own, and operate Manchief upon the termination of the PPA for Manchief on or before June 1, 2022.

48. The ALJ will approve Public Service's acquisition, ownership, and operation of Manchief upon closing the PSA on or before June 1, 2022, as just and reasonable and in the public interest.

### **3. Cost Recovery for Valmont and Manchief.**

49. The Settlement Agreement notes that the Colorado Energy Plan was developed through a comprehensive and competitive process documented in Public Service's 120-Day Report filed in Proceeding No. 16A-0396E on June 6, 2018. Through this process, bids for Manchief and Valmont, along with 17 bids for stand-alone storage, 14 bids for stand-alone solar, and 32 solar with storage bids were evaluated using the Phase I assumptions and methodologies approved by the Commission, along with oversight by the Independent Evaluator. In approving the Colorado Energy Plan, the Commission specifically found that the "competitive response to the RFP far exceeded all previous ERP solicitations and

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<sup>14</sup> Hearing Exhibit 105, Settlement Agreement at page 8; Hearing Exhibit 102, Direct Testimony of James F. Hill, at pages 30 through 34.

provides a rare opportunity to capture some of the lowest resource bids ever experienced in Colorado.”<sup>15</sup>

50. The Settling Parties agree that, as refined for this CPCN Proceeding, the purchase price for Valmont, with the Early Purchase Option, is \$18.5 Million and the purchase price for Manchief in 2022 is \$45.2 Million. The total projected levelized costs for Valmont, with the Early Purchase Option, and for Manchief in \$/kW-mo, categorized by purchase price, fixed Operation and Maintenance and ongoing capital, are shown in the Table on page 16 of the Settlement Agreement.<sup>16</sup>

51. As for cost recovery, the Settling Parties agree that, for Manchief, Public Service should recover energy costs through the Electric Commodity Adjustment (ECA) and capacity-related costs through the Purchased Capacity Cost Adjustment (PCCA) from the time that Manchief will be acquired until the costs are incorporated into base rates through a future rate case proceeding. Under the existing Manchief PPA, energy costs are recovered through the ECA, while capacity costs are recovered through the PCCA. Because Valmont is not currently operating on the system under a PPA, Public Service will include Valmont in rate base and will recover costs through base rates as part of a future rate case proceeding.<sup>17</sup>

52. The cost recovery for Manchief and Valmont will also include acquisition adjustments of \$6.0 million Manchief and \$6.4 million for Valmont for accounting purposes. Mr. Ihle’s Direct Testimony explained that, when an Independent Power Producer sells a

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<sup>15</sup> Decision No. C18-0761, ¶ 103 at page 31; *see* Hearing Exhibit 105, Settlement Agreement, at page 13.

<sup>16</sup> Hearing Exhibit 105, Settlement Agreement at page 16. The cost for Valmont to achieve commercial operation before the acquisition is discussed at page 17 of Hearing Exhibit 105, Settlement Agreement. Attachment B to the Settlement Agreement provides a more detailed comparison between the as bid and CPCN levelized costs for Valmont and Manchief, respectively.

<sup>17</sup> Hearing Exhibit 105, Settlement Agreement at page 18; Hearing Exhibit 104, Settlement Testimony of Jack W. Ihle at pages 28 and 29; Hearing Exhibit 101, Direct Testimony of Jack W. Ihle at pages 39 through 42.

generation asset to a utility, the seller determines the net book value of the asset, while the winning bid price in the competitive solicitation is the market price and the purchase price. The purchase prices for the Manchief and Valmont generation assets from the Phase II competitive solicitation were more than the net book value of the assets. The resulting difference is the “acquisition adjustment.” Public Service proposed to reflect these acquisition adjustments appropriately in its accounting treatment as part of the cost recovery for these acquisitions. While the acquisition adjustments are included in the purchase prices of the assets, Mr. Ihle testified that the accounting treatment would follow accounting requirements of the Federal Energy Regulatory Commission, which require an acquisition adjustment to be recorded separately from the rest of the purchase price.<sup>18</sup>

53. In the 2016 ERP 120-Day Report, Public Service stated that it would present a formal cost recovery request for the two existing gas-fired generator in the CPCN application proceeding. In its ERP Phase II Decision, the Commission found that, “We agree with the approach proposed by Public Service and direct the Company to address cost recovery requests in the required CPCN application filings.”<sup>19</sup> Public Service has done so in this Proceeding.

54. The Settlement Agreement does not explicitly discuss the acquisition adjustments. However, the Settling Parties agree explicitly “that the Commission should approve the Company’s cost recovery proposal relating to these two facilities as part of this Application.”<sup>20</sup>

55. Based upon substantial evidence in the record, the ALJ finds that the proposals for cost recovery for Manchief and Valmont, including recovery of the acquisition adjustments as

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<sup>18</sup> Hearing Exhibit 100, Application, ¶¶ 6(d), 11 and 12 at pages 4, 6, and 7; Hearing Exhibit 104, Settlement Testimony of Jack W. Ihle at page 11; Hearing Exhibit 101, Direct Testimony of Jack W. Ihle at pages 42 through 44.

<sup>19</sup> Decision No. C18-0761, ¶¶ 120 and 121 at page 36, in Proceeding No. 16A-0396E.

<sup>20</sup> Hearing Exhibit 105, Settlement Agreement, Overview, at page 5.

part of the purchase prices for these generation assets, are just and reasonable and will be approved.

**4. Future Reporting in the Quarterly Electric Commodity Adjustment Filings.**

56. In the Settlement Agreement, Public Service agrees to provide, for informational purposes only, as part of its quarterly filings related to the ECA, unit-level details regarding the expected and actual operation of all dispatchable resources and aggregate details regarding the expected and actual operation of each category of non-dispatchable resources (*e.g.*, wind category, solar category). This information, which may be designated as confidential or highly confidential as appropriate, will first be included in the June 2020 ECA filing. The Settling Parties agree that after two years of this reporting, the Settling Parties will meet to discuss the effectiveness of this reporting and whether it should be continued or modified in any way and report any proposed modifications to the Commission.<sup>21</sup>

57. Mr. Ihle testified in the Settlement Hearing that this ECA reporting provision was negotiated to address concerns of a Settling Party and was viewed as an opportunity to improve transparency and availability of certain information as Public Service continues its fleet transformation toward clean energy in future years. The Settlement Testimonies of Mr. Ihle and Ms. O'Neill supported the future ECA reporting provision as just and reasonable.<sup>22</sup>

58. Both Mr. Ihle and Ms. O'Neill testified that the ECA Reporting agreement in this Proceeding would solve issues in another proceeding (Proceeding No. 19A-0425E) pending

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<sup>21</sup> Hearing Exhibit 105, Settlement Agreement, at pages 17 and 18.

<sup>22</sup> Hearing Exhibit 104, Settlement Testimony of Jack W. Ihle at pages 14 and 30 through 33; and Hearing Exhibit 300, Settlement Testimony of Erin T. O'Neill at pages 26 through 29.

before ALJ Robert I. Garvey.<sup>23</sup> The ALJ was concerned that the Settling Parties were asking him at best to preempt the decision on an issue pending in Judge Garvey's proceeding and at worst to interfere in Judge Garvey's orderly and just resolution of that proceeding. This ALJ's concerns were rendered moot when Staff withdrew its intervention in Proceeding No. 19A-0425E.<sup>24</sup>

59. Public Service has assured the ALJ that the ECA reporting provision in the Settlement Agreement warrant no amendments to its ECA.<sup>25</sup>

60. The ALJ finds that the ECA reporting provision in the Settlement Agreement is just and reasonable and will be approved.

#### **5. Future Electric Resource Plan Filing and Reporting Commitments.**

61. The Settlement Agreement contains an agreement by Public Service to provide additional analyses about Valmont and Manchief as a part of future ERP filings with the Commission. Public Service commits to present Valmont and Manchief for retirement by 2038 and 2040, respectively, in Public Service's future ERP filings with a Resource Acquisition Period that includes those years, with the proviso that Public Service may bid Valmont and Manchief into competitive solicitations following their respective retirement dates.

62. The future ERP filing and reporting commitments include providing: (1) retirement dates; (2) an estimate of ongoing capital additions after 2035; (3) carbon-neutral

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<sup>23</sup> Hearing Exhibit 104, Settlement Testimony of Jack W. Ihle at pages 14, 30, and 31; and Hearing Exhibit 300, Settlement Testimony of Erin T. O'Neill at pages 27 and 28. Proceeding No. 19A-0425E concerns an application by Public Service for approval of the fuel. Purchased energy, and purchased wheeling expenses recovered through the ECA during calendar year 2018. See Decision No. R19-0820-I (mailed on October 4, 2019) in Proceeding No. 19A-0425E.

<sup>24</sup> During the Settlement Hearing, the ALJ learned that the parties had filed no stipulations or settlement agreement in that proceeding. Counsel for Staff informed the ALJ that Staff intended to withdraw its intervention in Proceeding No. 19A-0425E. That Notice of Withdrawal of Intervention was filed on January 23, 2020.

<sup>25</sup> See Notice in Response to Administrative Law Judge Denman's Request for Additional Information Regarding the Terms of the Settlement Agreement Regarding Future Reporting in the Quarterly Electric Commodity Adjustment Filings, filed by Public Service on January 27, 2020.

peaking resources analysis; and (4) future loads and resources table reporting. Mr. Ihle testified that these commitments were sought by certain Settling Parties during the settlement negotiations and were “ultimately necessary” to reach a unanimous settlement of the issues in this Proceeding.<sup>26</sup>

63. The ALJ finds that Public Service agreed to the future ERP filing and reporting commitments in order to achieve a unanimous settlement and to provide additional information in future ERP filings. One hopes that by providing more information in future ERP filings, the parties in those ERP proceedings may succeed in avoiding redundant discovery and reducing litigation expenses. While Public Service may be able to recover its litigation costs through rates, other non-governmental intervenors must bear their own litigation costs. Therefore, the ALJ finds that the future ERP filing and reporting commitments, as described in the Settlement Agreement, are just and reasonable.

64. During the Hearing on the Settlement Agreement, counsel for Public Service stated to the ALJ that no amendments to the ERP Rules, or any waiver of the ERP Rules, would be necessary to implement the future ERP filing and reporting commitments.

#### **6. Miscellaneous Agreements.**

65. The Settlement Agreement contains several other agreements between the Settling Parties on miscellaneous issues that arose during settlement negotiations.

66. To the extent those agreements on miscellaneous issues have not been specifically discussed in this Decision, the ALJ finds that those agreements are just and reasonable, and they will be approved without modification.

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<sup>26</sup> Hearing Exhibit 104, Settlement Testimony of Jack W. Ihle at pages 30 (lines 5-9) and 33 (lines 6 -13), *see also* pages 33 through 36.

**III. CONCLUSIONS**

67. The Commission has jurisdiction over the subject matter of this proceeding and over the Parties, pursuant to §§ 40-1-103(1), 40-6-109(1), and 40-5-101, C.R.S.

68. The Settlement Agreement is just and reasonable and in the public interest. The ALJ will approve the Settlement Agreement without modification. The Settlement Agreement, including its Attachments A (Rev. 1) and B, is attached to this Decision as Appendix A.

69. The Application, as modified by the Settlement Agreement, is just and reasonable and in the public interest. The Application, as modified by the Settlement Agreement, will be granted.

70. This Decision will constitute a CPCN for Public Service to acquire, own, and operate the existing 301 MW Manchief facility, consistent with the findings and discussion in this Decision.

71. This Decision will constitute a CPCN for Public Service to acquire, own, and operate the existing 82 MW Valmont units, consistent with the findings and discussion in this Decision.

72. Public Service will be ordered to comply with the agreements, terms, and conditions in the Settlement Agreement and with this Decision.

73. The other Settling Parties will be ordered to comply with the agreements, terms, and conditions in the Settlement Agreement and with this Decision.

74. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this Proceeding, along with a written recommended decision, and the ALJ recommends that the Commission enter the following Order.

**IV. ORDER****A. The Commission Orders That:**

1. The Unopposed Joint Motion to Approve Settlement Agreement filed on January 8, 2020, by Public Service Company of Colorado (Public Service), Trial Staff of the Colorado Public Utilities Commission, the Colorado Office of Consumer Counsel, Western Resource Advocates, and Southwest Generation Operating Company, LLC (together Settling Parties), as corrected on January 13, 2020, is granted, consistent with the findings and discussion in this Decision.

2. The Settlement Agreement filed on January 8, 2020, by Public Service and the Settling Parties, which is attached to this Decision as Appendix A, is approved without modification, consistent with the findings and discussion in this Decision.

3. The Verified Application for Certificates of Public Convenience and Necessity (CPCNs) for the acquisition of: (1) the 301 MW Manchief generation facility (Manchief); and (2) the 82 MW Valmont 7 and 8 generation units (Valmont), as modified by the Settlement Agreement, is granted consistent with the findings and discussion in this Decision.

4. This Decision shall constitute a CPCN for Public Service to acquire, own, and operate the existing 301 MW Manchief facility, consistent with the findings and discussion in this Decision.

5. This Decision shall constitute a CPCN for Public Service to acquire, own, and operate the existing 82 MW Valmont units, consistent with the findings and discussion in this Decision.

6. Public Service shall comply with the agreements, terms, and conditions in the Settlement Agreement, and with this Decision.



7. The other Settling Parties shall comply with the agreements, terms, and conditions in the Settlement Agreement and with this Decision.

8. Proceeding No. 19A-0409E shall be closed.

9. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

10. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the Parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a Party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that Party must request and pay for a transcript to be filed, or the Parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the Administrative Law Judge and the Parties cannot challenge these facts. This restriction will limit what the Commission can review if exceptions are filed.

11. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

( S E A L )



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

STEVEN H. DENMAN

\_\_\_\_\_  
Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director